

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE APPLICATION OF )          UNITED ELECTRIC CO-OP, INC. AND THE )          CITY OF RUPERT FOR AN ORDER )          APPROVING A SERVICE TERRITORY )          AGREEMENT PURSUANT TO <i>IDAHO CODE</i> )          § 61-333(1). )</b>	<b>CASE NO. GNR-E-03-9</b>  <b>ORDER NO. 29348</b>
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On June 20, 2003, United Electric Co-op and the City of Rupert filed an Application for approval of their service territory agreement pursuant to the Idaho Electric Supplier Stabilization Act (ESSA), codified at *Idaho Code* §§ 61-332 *et seq.* United is the successor co-op entity following the consolidation of Rural Electric Company and Unity Light & Power. Both United and the City supply electric service to their respective consumers in adjacent and contiguous service territories.

In Order No. 29281 the Commission issued a Notice of Modified Procedure soliciting public comment on the Parties' Agreement. The Commission Staff submitted the only comment and recommended the Commission approve the Application. After reviewing the Application, the Agreement and the Staff comments, we approve the Application as conditioned below.

**THE ESSA**

The purpose of the ESSA is to promote harmony among and between electric suppliers furnishing electricity within Idaho. More specifically, the ESSA: (1) prohibits the "pirating" of consumers already served by another supplier; (2) discourages duplication of electric facilities; (3) actively supervises certain conduct of electric suppliers; and (4) stabilizes the territories and consumers served by such electric suppliers. *Idaho Code* § 61-332. Under the ESSA, an "electric supplier" is any public utility, cooperative, or municipality supplying or intending to supply electric service to a consumer. *Idaho Code* § 61-332A(5).

*Idaho Code* § 61-333(1) provides that any electric supplier may contract with any other electric supplier for the purpose of "allocating territories, consumers, and future consumers ... and designating which territories and consumers are to be served by which contracting electric supplier." Under the ESSA, all agreements or contracts for the allocation of service territories or consumers shall be filed with the Commission. *Idaho Code* § 61-333(1). This

section further provides that the Commission may, after notice and opportunity for hearing, “approve or reject contracts . . . between municipalities and cooperatives.” The Commission “shall approve such contracts only upon finding that the allocation of territories or consumers is in conformance with the provisions and purposes of” the ESSA. *Id.*, *Idaho Code* § 61-334B.

*Idaho Code* § 61-334B(1) also allows the Commission to grant an exception to the anti-pirating provision of the ESSA found at *Idaho Code* § 61-332B. Before granting such an exception, the Commission must find “that granting a request is consistent with the purposes of” the ESSA.

### THE APPLICATION

The parties ask that the Commission approve their “Service Area Agreement” and its amendment dated April 2, 1985 and May 6, 2003, respectively. In the 1985 Agreement, United’s predecessor Rural Electric and the City agreed to establish a separate service territory for each party in Minidoka County. The Agreement also addresses the exchange of customers and facilities resulting from the allocation of the two service territories. Exhibit No. 1 at ¶ 2. Paragraph 2 states that if a supplier is providing service to an existing customer located in the other supplier’s newly allocated territory, the “withdrawing party shall disconnect its service from each consumer in the relinquished territory when the acquiring [supplier] is prepared to connect said consumer to its system. . . . The parties shall cooperate with one another . . . to avoid inconvenience to the affected consumers.”

The Agreement also discusses the relinquishment and transfer of all easements and right-of-ways in the other supplier’s territory. However, the parties may reserve such easements and right-of-ways necessary to provide service to their consumers. *Id.* at ¶ 4. The Agreement provides that if the City annexes land that lies within United’s service area, then United shall be allowed to continue to serve “existing future consumers in said service territory. [T]he City agrees that it will not exercise the power of condemnation . . . as to any of [United’s] service area as established under this Agreement . . . .” *Id.* at ¶ 3.

In the 2003 amendment, the parties modified the initial Agreement by changing the boundary line dividing the parties’ service territories. Exhibit No. 2. The amendment also identified two customers “who are in close proximity to the service area of the City of Rupert and [they] may continue to be served by United, if in fact they are in the Rupert service area.”

Amendment at 2. All other terms and conditions of the initial Agreement remain in full force and effect.

The Application states that the Agreement was negotiated to settle and establish service territories between the parties, to provide stability and safety in service to consumers, and to eliminate duplication of services. Application at ¶ 3. Because the initial Agreement predated the 2000 and 2001 amendments to the ESSA, the parties now request that the Commission approve the Service Area Agreement. The Parties assert that their Agreement comports with the purposes of the ESSA. More specifically, their Agreement provides for stability of services to consumers, eliminates duplication of facilities, and promotes the public safety in their respective service territories. Application at ¶ 3.

#### STAFF COMMENTS

Staff recommended approval of the 1985 Agreement and its amendment. Staff noted that the Agreement appears to provide the least-cost service option for customers and complies with the ESSA by drawing boundary lines that identify each utility's service territory. Although the Agreement provides for the orderly exchange of customers who were initially in the other party's service area, Staff did not know whether the exchanges had been completed. Nevertheless, Staff believed that the Agreement contained in the Application would support the granting of an exception to the anti-pirating provision of the ESSA.

Staff also addressed one other issue contained in paragraph 17 of the Agreement. This paragraph provides that the prevailing party in any legal action arising under the Agreement be entitled to recover reasonable attorney's fees. Staff explained that prior to the amendments to the ESSA enacted in December 2000 and February 2001, *Idaho Code* § 61-334B provided that any supplier whose rights under the ESSA are in jeopardy, may bring suit in district court. *Idaho Code* § 61-334A now provides an aggrieved customer or supplier "may file a complaint with the commission" and the Commission shall resolve the matter. *See Idaho Code* §§ 61-334A(2-3); 61-334B(3). In other words, the resolution of disputes was removed from the jurisdiction of the Courts and is to be submitted to the Commission. Under the Public Utilities Law, the Commission does not have authority to award attorney's fees other than intervenor funding pursuant to *Idaho Code* § 61-617A.

## FINDINGS

Having reviewed the Parties' "Service Area Stabilization Agreement," the 2003 amendment and the Staff's supporting comments, we find it is reasonable to approve the Application and Agreement. We find the Agreement is consistent with the purposes of the ESSA. More specifically, we find that it promotes harmony among the electric suppliers, discourages duplication of facilities, and in particular, stabilizes the territories and consumers served by these two electric suppliers. There were no opposing comments.

Because no customer transfer or exchange has taken place pursuant to paragraph 2, an exception from the anti-pirating provisions of the ESSA is not necessary at this time. If and when a transfer of customers between the parties is contemplated, we find that it is appropriate for the affected customers to be notified in advance of the proposed transfer. We further find that it is appropriate that the parties seek to obtain the consent of the customers who are to be transferred from one supplier to another. We believe that informing customers is an appropriate condition prior to formally considering whether an exception from the anti-pirating provision is warranted. See *Idaho Code* § 61-334B(1), (2).

Staff also made one other comment that merits discussion. The Staff observed that paragraph 17 of the Agreement provides that the prevailing party in any legal action is entitled to recover reasonable attorney fees. As Staff noted, the 2000 and 2001 amendments to the ESSA remove resolution of ESSA disputes from the district courts and authorize the Commission to resolve these disputes. See *Idaho Code* § 61-334A. Without reforming the contract, we note that the Commission does not have authority to award attorney fees other than as provided by *Idaho Code* § 61-617A.

## ORDER

IT IS HEREBY ORDERED that the Application filed by United Electric Co-op and City of Rupert to approve a "Service Area Stabilization Agreement" dated April 2, 1995 and the amendment dated May 6, 2003, are approved as conditioned above.


IT IS FURTHER ORDERED that before filing an application for a transfer of customers and for an exception to the anti-pirating provision of the ESSA, that the affected customers be notified of the suppliers' desire to exchange customers. An exception application shall disclose whether the affected customers consent to the transfer.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. GNR-E-03-9 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. GNR-E-03-9. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* §§ 61-626, 61-334B(3).

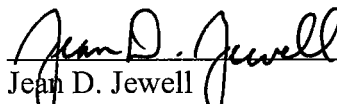
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 8<sup>th</sup> day of October 2003.

  
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PAUL KJELLANDER, PRESIDENT

  
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MARSHA H. SMITH, COMMISSIONER

  
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DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
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Jean D. Jewell  
Commission Secretary

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